IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No. 854 of 1988

Smt. Saroj Gangahar widow of Sh. Dinesh Gangahar

....Appellant

Versus

Bishan Dass and others

...Respondents

F.A.O. No. 855 of 1988

Smt. Saroj Gangahar widow of Sh. Dinesh Gangahar and another

...Appellants

Versus

Bishan Dass and others

...Respondents

F.A.O. No. 856 of 1988

Smt. Bhanumati Joshi

....Appellant

Versus

Bishan Dass and others

...Respondents

Date of decision: 10 .08.2006

Coram: Hon'ble Mr. Justice Mahesh Grover

Present: Mr. S.D. Bansal, Advocate
for respondent No.3.
Mr. Inderjit Sharma, Advocate for
Mr. Pardeep Bedi, Advocate
for respondent Nos. 4 and 5.

Judgment

By this judgment three appeals bearing FAO Nos. 854 to 856 of 1988 shall be disposed of.

The claimants have filed the present appeal seeking enhancement of the compensation awarded to them by the MACT,

Kurukshetra vide its award dated 7.12.1987. On 18.6.1986, Dinesh Gangahar, the husband of appellant-Smt. Saroj Gangahar was going from Delhi to Chandigarh driving a car bearing No. CHA 3807. At about 9.15 P.M. when the car was near village Partapgarh on G.T.Road, a truck bearing No. HPH 143 driven by respondent No.1 came from the opposite side and struck against the car driven by the deceased, as a result of which, he died on the spot and his 13 years old daughter-Jayatika also lost her life. The other occupants of the car, namely, Saroj Gangahar wife of Dinesh Gangahar, Bhanumati, sister and one Tarsem Lal, an employee of Dinesh Gangahar received the injuries. Besides this, the other occupants two, namely, Vikas Joshi and Manisha, another daughter of Dinesh Gangahar also received minor injuries.

Saroj Gangahar, wife and Manisha Gangahar, daughter of the deceased filed a claim petition No.8 of 1987 seeking compensation on account of the death of Dinesh Gangahar and Claim Petition No. 7 on account of death of Jayatika. The third claim petition bearing No.39 of 1986 was filed by Bhanumati, who was the sister of the deceased Dinesh Gangahar, on account of the injuries which she had suffered in the said accident.

The Tribunal came to the conclusion that the accident had occurred due to a rash and negligent driving of the truck, in question, who came from the wrong side of the road and hit the car, thereafter, the Tribunal went on to answer the claim petitions separately.

The present three appeals bearing FAO Nos. 854 to 856 of 1988 have now been filed by the claimants regarding their respective claims seeking enhancement of the compensation on account of the death of

Dinesh Gangahar, Jayatika and on account of the injuries suffered by the appellants in the said accident.

FAO No.854 of 1988

This appeal is arising out of Claim Petition No.8 of 1987 which was preferred by appellants Saroj Gangahar and Manisha Gangahar on account of the death of her husband-Dinesh Gangahar. The Tribunal while assessing income of the deceased-Dinesh Gangahar, came to the conclusion that he was earning Rs.2,865/- per month. Reliance in this context was placed on the details of the salary given by the firm M/S D.K. Architect with whom the deceased was allegedly employed. The dependency was assessed at Rs.1910/- per month and a multiplier of 15 was applied and the compensation was assessed at Rs.3,43,800/- by the Tribunal.

A perusal of the record shows that the Tribunal had gone wrong by ignoring cogent evidence on record regarding the income of the deceased. The Tribunal has proceeded on the assumption that the deceased was working with the firm M/s D.K. Architects whereas this was the firm which was owned by the deceased and from the firm, he used to draw Rs.2,000/- per month for his own expenses. The Tribunal has taken this as his income whereas the fact is that the deceased used to draw Rs.2,000/- per month from the income of the Firm but the overall income of Firm naturally would have been more. Tarsem Lal s/o Gurbachan Ram, who is PW2 was an employee of the Firm and was working as a Draftsman therein. He has testified this fact that Dinesh Gangahar used to draw Rs.2,000/- per month from the income of M/S D.K. Architects which was named after the deceased as D.K. Architects. The deceased was also drawing Rs.1,000/- per month from the college wherein he used to give lectures and was

drawing a pension of Rs.1244/- per month from Army from where he had retired. He was also earning Rs.3,000/- per month by working as an examiner. The income of the deceased, therefore, was roughly around Rs.5244/- per month. The appellant stated that the deceased was earning about Rs.5000/- to Rs.6000/- per month which is not really an exaggerated account of the income of the deceased. She has also stated that after the death of her husband, she also suffered on account of the stoppage of pension. It would be, therefore, safe to assess the income of the deceased at Rs.4000/- per month by taking into consideration all the probabilities. The deceased was owner of the Firm and he had employed Tarsem Lal as Draftsman. This shows that he would be meeting the expenses of such employee as well. So, Rs.4,000/- per month as his income would not be on the higher side. The dependency, after deducting 1/4th of the income of the deceased as personal expenses, would safely be assessed at Rs.3,000/- per month. The annual dependency works out to Rs.36,000/-and by applying a multiplier of 15 which has rightly been applied by the Tribunal, the compensation would work out to Rs.5,40,000/-.

The present appeal is, therefore, allowed and the appellant is awarded a compensation of Rs.5,40,000/- on account of the death of her husband Dinesh Gangahar. The appellant shall be entitled to enhanced amount after deducting the amount of compensation already awarded. This amount shall be paid along with interest @ 9% per annum from the date of petition till the date of its realization.

The present appeal is allowed and the award dated 7.12.1987 of MACT, Kurukshetra is modified to the extent as indicated above.

F.A.O. No.855 of 1988

In this appeal, the appellant is the widow of Dinesh Gangahar, who claimed compensation on account of death of her 13 years old daughter namely, Jayatika which pertains to claim petition No.7 of 1987. The deceased-Jayatika was aged 13 years and was a student of 8th class. The Tribunal awarded a sum of Rs.20,000/- as compensation on account of her death. The Hon'ble Supreme Court of India in a judgment reported as **Manju Devi and another** Vs. **Musafir Paswan and another**, 2005, ACJ, 99, has held that while assessing the compensation of a child, notional income can also be taken into consideration and a sum of Rs.2,25,000/- was awarded on account of the death of 13 years old child. The observations of Hon'ble the Supreme Court of India are as follows:-

> "As set out in the Second Schedule to the Motor Vehicles Act, 1988, for a boy of 13 years of age, a multiplier of 15 would have to be applied. As per the Second Schedule, he being a non-earning person, a sum of Rs. 15,000/- must be taken as the income. Thus, the compensation comes to Rs.2,25,000/-."

The observations of Hon'ble the Supreme Court of India are attracted in the present circumstances and it is held that the appellant shall be entitled to Rs.2,25,000/- on account of death of Jayatika a 13 years old girl.

The present appeal is allowed and the award dated 7.12.1987 of the Tribunal, is modified to the extent indicated above.

FAO No.856 of 1988

This appeal is arising out of MACT No.39 of 1986. In

this appeal, the claimant is Smt. Bhanumati Joshi, who had suffered injuries in the same accident.

Bhanumati Joshi-appellant in this case has suffered serious injuries from the forehead till the bottom portion of her face. The bridge of the nose was flattened and there was fracture on the facial bone. The appellant remained admitted in PGI from 19.6.1986 to 25.7.1987. As a result of which she had suffered permanent disfigurement of her face. The vision in her right eye has been effected adversely. She was working as a teacher in Bhartiya Vidya Bhawan, Delhi and as a result of the severe injuries, she had to remain on leave for a period of 182 days, out of which 133 days were without pay. There is no rebuttal to this evidence adduced by the appellant. The Tribunal awarded a sum of Rs.50,000/- on account of pain and sufferings and a total sum of Rs.15172.50 ps. was awarded as special damages which included the loss of salary and cost of the treatment. The appellant was, therefore, held entitled to an amount of Rs.65172.50 ps. The appellant was aged 58 years and as a result of injuries, serious impairment of her face has taken place.

In the circumstance of the case, it would be appropriate if the amount of damages is enhanced from Rs.50,000/- to Rs.1 lac. The compensation awarded on account of other heads would, however, remain the same.

The present appeal is allowed and the award dated 7.12.1987 of MACT, Kurukshetra is modified to the extent as indicated above.

August 10 ,2006 **(Mahesh Grover)**
Seema **Judge**